IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 28.1.2008

(1) **RSA No.40 of 1984**

Megh Raj and others Vs. Manphool and others

Present : Mr.Arun Jain, Advocate for the appellants.
Mr.S.N. Saini, Advocate.
Mr.S.K. Jain, Advocate.

(2) **RSA No.2712 of 1987**

Maru through L.Rs. & others Vs. Rati Ram and others

Present : Mr.S.N. Saini, Advocate for the appellants.
Mr.Arun Jain, Advocate for the respondents.

CORAM : HON'BLE MR.JUSTICE RAJIVE BHALLA

****

RAJIVE BHALLA, J

This judgement shall dispose of Regular Second Appeal Nos.40 of 1984 (Megh Raj and others V. Manphool and others) and 2712 of 1987 (Maru and others V. Ratti Ram and others), as they invoke common questions of law.

In order to place the present controversy in its correct perspective, a narrative of the facts would be appropriate.

Ram Rikh S/o Shri Bhiwan R/o Village Umedpura, Tehsil and Distt. Sirsa, transferred 6/7 share of his total land measuring 643 Bighas and 4 Biswas, situated in Village Umedpura, Tehsil and Distt.Sirsa, in favour of his wife, sons and grandsons, (herein after referred to as the 'Landowners') vide a civil court decree dated 27.8.1957 passed in Civil Suit No.1019-A “Rameshwar V. Ram Rikh”. The Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as `the Punjab Act') ,that placed a restriction on the extent of land holding came to be enacted. Admittedly,the

suit land along with other land was declared surplus under the Punjab Act in the hands of Ram Rikh, pursuant to an order dated 24.10.60. Neither Ram Rikh nor any of the alleged beneficiaries, under the decree, challenged the aforementioned order.

The Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as `the Haryana Act'), came into force with effect from 24.1.1971. Section 12(3) thereof, provides that any area declared surplus under the Punjab Act, which has not so far vested in the State Government, shall be deemed to have vested in the State Government, with effect from the appointed day i.e. 24.1.1971.

The State of Haryana, thereafter, framed a scheme titled as the Haryana Utilisation of Surplus and other Areas Scheme, 1976 (hereinafter referred to as `the Utilization Scheme). Pursuant to powers vested under the Utilisation Scheme, the Sub Divisional Officer (Civil), Sirsa, exercising the powers of the Prescribed Authority, allotted the land subject matter of the decree to sitting tenants, (hereinafter referred to as the allottees) vide order dated 17.10.1978.

The heirs of Ram Rikh, (hereinafter referred to as `the landowners) claiming that they had received the allotted property, pursuant to the collusive decree dated 27.8.1957, filed two civil suits namely; Civil Suit No.24-C dated 15.6.1979 (Megh Raj and others Vs. Manphool and others) and Civil Suit No.62-C dated 15.6.1979 (Ratti Ram and others Vs. Maru and others), impugning the legality of the order of allotment dated 17.10.1978. They asserted that the suit land was transferred to them before .30.7.1958 and as Section 8(1)(a) of the Haryana Act saves, transfers of land made prior to 30.7.1958, from the operation of Section 12(3), the suit

land could not vest in the State of Haryana under Section 12(3) of the Haryana Act. The Prescribed Authority therefore had no jurisdiction to pass an order allotting the land to the allottees.

The allottees, filed a written statement, contesting the correctness of the aforementioned assertions and pleaded that the jurisdiction of civil Courts to entertain challenge to the order passed by the Prescribed Authority was barred under the provisions of the Haryana Act. It was further averred that as the land had been declared surplus on 24.10.1960, under the Punjab Law, it vested in the State of Haryana by virtue of the provisions of Section 12(3) of the Haryana Act. The Prescribed Authority therefore rightly allotted the land to the tenants.

Civil Suit No.24-C of 15.6.1979 was dismissed by the Sub Judge, IIIrd Class, Sirsa,by holding that the jurisdiction of Civil Courts was barred. Civil Suit No.62-C of 1979 which came up before Sub Judge, Ist Class, Sirsa was however decreed by holding that as the land was transferred by Ram Rikh before 30.7.1958, it could not vest in the State of Haryana. The order passed by the Prescribed Authority, was therefore without jurisdiction and civil Courts could entertain the suit.

Unfortunately, appeals impugning these judgments and decrees came up for hearing before different first appellate Courts. Both appeals were dismissed, thus, giving rise to a situation where one set of Courts held that the the Prescribed Authority had jurisdiction to pass the impugned order, whereas the other set of Courts held that the order passed by the Prescribed Authority was without jurisdiction. Both land owners and allottees are in appeal before this Court. RSA Nos.40 of 1984 filed by the landowners and 2712 of 1987 by the allottees.

Counsel for the land owners contends that the order dated 17.10.1978, allotting the suit land is void. Admittedly Ram Rikh, suffered a decree dated 27.8.1957, transferring the suit land to the land owners. With the coming into force of the Haryana Act and the enactment of Section 8(1)(a) thereof, this land stood specifically excluded from its operation and, therefore could not vest in the State of Haryana u/s 12(3).The Prescribed Authority therefore had no jurisdiction to appropriate the land and allot the same. The learned courts below in Civil Suit No.62-C of 15.6.1979 and the appeal arising therefrom, rightly held that the civil suit was not barred and set aside the order passed by the Prescribed Authority. The findings recorded to the contrary in the other civil suit are, therefore, incorrect. Reliance for the proposition that in view of Section 8(1)(a) of the Haryana Act, the suit land could not vest in the State of Harayna, is placed upon a Full Bench judgement of this Court, reported as **Jaswant Kaur and another V. State of Haryana and another**, 1977 PLJ 230. For the proposition that the jurisdiction of civil Courts is not barred, reliance is placed upon **State of Haryana and others V. Vinod Kumar and others,** 1986 PLJ 161.

Counsel for the allottees on the other hand, submit that the allottees were tenants over the land in dispute. The suit land was declared surplus in the hands of Ram Rikh and the land in their possession was declared as tenants permissible area. The order declaring the suit land surplus was never challenged either by Ram Rikh or by the alleged land owners whether before or after the enactment of the Haryana Act. Section 12(3) of the Haryana Act, prescribes that surplus area declared under the Punjab Act, shall vest automatically in the State of Haryana with effect from

the appointed day. Consequently, as the suit land has statutorily vested in the State of Haryana, the Prescribed Authority, exercising powers under the Haryana Utilisation Scheme, did not commit an error of jurisdiction or of law, as would vest jurisdiction with, a civil Court to entertain a suit,laying challenge thereto.

Another assertion put forth by counsel for the allottees is that, Section 26 of the Haryana Act, bars the jurisdiction of a civil Court to entertain challenge to matters required to be adjudicated under the Haryana Act. The Courts below, in proceedings emanating from Civil Suit No.62-C of 15.6.1979, had no jurisdiction to reopen the order of surplus area,which had attained finality. Any grievance against the impugned order could only have been raised in accordance with the procedure i.e. by filing an appeal/ revision under the Haryana Act. The order declaring the suit land surplus, under the Punjab Act, has attained finality as neither Ram Rikh nor the land owners ever laid challenge thereto. Consequently, challenge to the order passed by the Prescribed Authority, which in essence seeks to reopen the surplus area case is not permissible.

It is further submitted that Section 8 (1)(a) of the Haryana Act, cannot be interpreted to reopen or undo orders passed under the Punjab Act, more particularly where these orders have attained finality. Section 8 (1)(a) may apply to cases, where surplus area proceedings were pending, under the Punjab Act, on the appointed day under the Haryana Act, but in no circumstances would apply to cases where the declaration of surplus area under the Punjab Act has attained finality. Therefore, the judgement and decree passed by the Court below in Civil Suit No.62-C of 1979 and the appeal arising therefrom,holding that as the land could not have been

declared surplus, did not vest in the State under the Haryana Act and,therefore, the order passed by the Prescribed Authority was beyond jurisdiction is an incorrect interpretation of the provisions of Section 8(1)(a) of the Act.

Though counsel for the landowners have framed and filed substantial questions of law, during argument, the following questions of law arose for consideration.

> "1. Whether Section 26 of the Haryana Act 34 of 1988 bars a civil Court from entertaining challenge to an order passed by a Prescribed Authority, under the aforementioned Act?
>
> 2. Whether in view of Section 8(1)(a) of the Haryana Act, land declared surplus in the hands of Ram Rikh, under the Punjab Act,would not vest in the State of Haryana under Section 12(3) of the Haryana Act?
>
> 3. Whether the order passed by the Prescribed Authority was without jurisdiction ?

The first question, that merits adjudication is the scope and ambit of Section 26 of the Haryana Act. Section 26 of the Act reads as follows :-

> "26. Bar of jurisdiction – (1) No civil court shall have jurisdiction to -
>
> (a) entertain or proceed with a suit for specific performance of a contract for transfer of land which affects the right of the State Government to the surplus area under this Act; or

(b) settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the prescribed authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed authority made under or in pursuance of this Act shall be called in question in any court."

A plain reading of Section 26 leaves no manner of doubt that any matter, arising under the Haryana Act, required to be settled, decided or dealt with by laying challenge, before the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority can only be impugned before the aforesaid authorities. As a natural corollary, where the matter falls squarely within the ambit of the statutory powers of appeal, review and revision conferred upon the authorities enumerated under the Haryana Act, the jurisdiction of civil Courts to entertain challenge in such matter would be explicitly barred.

Civil Courts, draw their jurisdiction, to adjudicate matters from Section 9 of the C.P.C., which reads as follows :-

"9. Courts to try all civil suits unless barred – The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

A civil Court has plenary jurisdiction to adjudicate all disputes of a civil nature, except where cognizance thereof is barred either expressly or by necessary implication. As a general rule,courts are loathe to infer

ouster of jurisdiction but where a statutory enactment, explicitly or by necessary intent, excludes the jurisdiction of civil Courts, such statutory intent, shall prevail. Section 26 of the Haryana Act, reproduced herein above, bars jurisdiction of civil Courts, to entertain, settle, decide or deal with any matter, which under the Act, is required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority. Section 18 of the Haryana Act, prescribes the mode and manner of laying challenge to an order passed by an authority under the Haryana Act and reads as follows :-

> "18. Appeal, Review and Revision – (1) Any person aggrieved by any decision or order of the prescribed authority, not being the Collector, may, within (fifteen days) from the date of the decision or order,prefer an appeal to the Collector in such form and manner as may be prescribed :
>
> Provided that the Collector may entertain the appeal after the expiry of the said period of (fifteen days) if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
>
> (2) Any person aggrieved by a decision or order of the Collector (whether acting as prescribed authority or not) not being a decision or order made in an appeal under sub-section (1), may within (fifteen days) from the date of the decision or order, prefer an appeal to the Commissioner in such form and manner as may be prescribed :
>
> Provided that the Commissioner may entertain the appeal after the expiry of the said period (fifteen days) if he is

satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Omitted

(4) Any person aggrieved by an order of the Collector under Sub-section(1), may within (thirty days) from the date of the order, file a revision petition before the Commissioner so as to challenge the legality or propriety of such order and the Commissioner may pass such order as he may deem fit. The order of the Commissioner shall be final.

(5) Omitted

(6) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo moto at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order and may pass such order in relation thereto as he may deem fit.

(7) Omitted

(8) Notwithstanding anything contained in Section 21, a person who files an appeal or a revision against the order declaring his land as surplus area and the appeal or revision filed by him fails,shall be liable to pay, for the period he is or has at any time been in possession of the land declared surplus to which he is or was not entitled under the law, a licence fee equal to thirty times the land holding tax, recoverable in respect of this area.

(9). Omitted

Thus, matters, that fall within the exclusive domain of a Financial Commissioner, Commissioner, Collector or a Prescribed Authority, would necessarily have to be dealt with in accordance with the provisions of the Haryana Act.

The question that, however, merits attention is, whether civil Courts, despite the explicit bar set out in Section 26, would have jurisdiction to entertain challenge to an order passed under the Haryana Act,which appears to be beyond or without jurisdiction. The answer to this question need not detain us any further as it is well settled that where the impugned order is a nullity or without jurisdiction,statutory bars as enacted by Section 26 would not oust the jurisdiction of a Civil Court to entertain a challenge thereto . A Full Bench of this Court in **State of Haryana V. Vinod Kumar (supra),** while dealing with this proposition held as follows :-

> "In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the civil Courts cannot operate in cases where the plea raised before the civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is nullity."

It is, thus, apparent that where the impugned order is a nullity or is without jurisdiction, a civil Court would, irrespective of the ouster of its jurisdiction under Section 26, be entitled to entertain a suit and record its opinion for or against the impugned order. It is, therefore, held that jurisdiction of a civil Court, to entertain a dispute, arising from an order passed under the Haryana Act would not be barred, where the impugned

order is without jurisdiction or is a nullity.

The next question, adjudication whereof would determine, whether the order passed by the Prescribed Authority dated 17.10.1978 was with or without jurisdiction, revolves around the interpretation of Section 8 (1)(a) of the Haryana Act and the import of Section 12(3).It would therefore be necessary to reproduce the aforementioned statutory provisions :-

> **Section 8** – Certain transfers (or dispositions) not to affect surplus area – (1) Save in the case of land acquired by the Union Government or the State Government under any law for the time being in force or by a tenant under the Pepsu law or the Punjab law or by an heir by inheritance, no transfer (or disposition) of land in excess of -
>
> (a) the permissible area under the Pepsu law or the Punjab law after the 20th day of July, 1958; and
>
> (b) the permissible area under this Act, except a bonafide transfer, (or disposition) after the appointed day.
>
> Shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer (or disposition) :
>
> Provided that any person who has received an advantage under such transfer (or disposition) of land shall be bound to restore it, or to pay compensation for it, to the person from whom he received it

(2) The burden of proving the transfer (or disposition) to be a bonafide one shall be on the transferor.

(3)If any person transfers (or disposes of) any land after the appointed day in contravention of the provisions of sub-section (1), the land so transferred (or disposed of) shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case of the area left with him after such transfer (or disposition of) is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area. If the area left with him is less than the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred (or disposed of) shall also be deemed to be the surplus area. If there is more than one transferee, the deficiency of the surplus area shall be made up from each of the transferees in the proposition to the land transferred (or disposed of) to them."

"**Section 12(3)** - The area declared surplus or tenant's permissible area under the Punjab law and the area declared surplus under the Pepsu law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the

> appointed day and the area which may be so declared under the Punjab law or the Pepsu law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration."

Before proceeding to examine the nature of Section 8 and the import of Section 12(3) of the Act, a brief reference to the facts would be appropriate.

Ram Rikh S/o Shri Bhiwan R/o Village Umedpura, Tehsil and Distt. Sirsa, transferred 6/7 share of his total land measuring 643 Bighas and 4 Biswas, situated in Village Umedpura, Tehsil and Distt.Sirsa, in favour of his wife, sons and grandsons, vide a civil court decree dated 27.8.1957 passed in Civil Suit No.1019-A "Rameshwar V. Ram Rikh". The Punjab Act, brought into effect a statutory limit on the extent of a land owners holding. As admitted by all parties, the land in dispute was declared surplus, under the Punjab Act. This order attained finality as neither Ram Rikh nor the land owners or the beneficiaries under the decree, impugned the declaration of surplus area before or after the enactment of the Haryana Act. It is also not denied that in the present suits, no relief is claimed with respect to the order declaring the suit land surplus. The only relief prayed for, is for a declaration, that the order passed by the Prescribed Authority is illegal, null and void.

The plea that found favour with the trial court in Civil Suit.No. 62-C of 15.6.1979 and the appellate Court, in the first appeal arising therefrom, was that as the suit land was transferred by Ram Rikh, before 30.7.1958 it did not vest in the State of Haryana under the provisions of

Section 12(3) of the Haryana Act as Section 8(1)(a) of the Harayana Act saves such transfers. As a result, the suit land was not available for allotment under the Haryana Utilisation Scheme and the Prescribed Authority had no jurisdiction to appropriate and allot the land.

On the other hand, in proceedings arising from Civil Suit No.24-C of 15.6.1979, the trial Court, as also the appellate Court held to the contrary and dismissed the suit as being barred by the provisions of Section 26 of the Act.

In my considered opinion, Section 8(1)(a) of the Haryana Act, cannot be construed to support an interpretation that land, already declared surplus under the Punjab Act, would be saved by the provisions of Section 8 (1)(a) of the Haryana Act and, therefore, would not vest in the State of Haryana under Section 12(3) of the Act. A conjoint reading of Section 8(1) (a) and 12(3) of the Act, leaves no manner of doubt that Section 8(1)(a) does not apply to orders, declaring surplus area, that have attained finality, under the Punjab Act. Section 8(1)(a) does not admit to an interpretation that proceedings concluded under the Punjab Act, would be undone or reopened. Section 8(1)(a), in my considered opinion may apply to such cases, where proceedings for declaration of surplus area, under the Punjab Act, were pending on the appointed day under the Haryana Act. Any other interpretation to the provisions of Section 8(1)(a) of the Act, would in essence assign a retrospective operation thereto. It would, therefore, necessarily have to be held that Section 8(1)(a) does not apply to proceedings/orders of surplus area that have concluded/attained finality before the coming into force of the Haryana Act.

There can be no quarrel with the interpretation assigned to

Section 8(1)(a) of the Haryana Act, in **Jaswant Kaur V. State of Haryana** (supra). However, the said judgement does support the arguments, advanced by counsel for the landlords that Section 8(1)(a) of the Haryana Act reopens surplus area cases already concluded under the Punjab Act. In fact, while upholding the vires of Section 12(3) of the Haryana Act, the Full Bench held that land declared surplus under the Punjab Act would automatically vest in the State of Haryana on the appointed day.

Admittedly, in the present case, the suit land was declared surplus under the Punjab Act on 24.10.1960. The said order has attained finality. No proceedings with respect to the suit land were pending on the appointed day under the Haryana Act. Section 8 (1)(a) of the Haryana Act was, therefore, not applicable. In order to fortify this conclusion, a reference would have to be made to a judgement of Hon'ble the Supreme Court reported as **Bhagwanti Devi and another V. State of Haryana and another,** 1994 PLJ 245. The Hon'ble Supreme Court, while considering the question of vesting of surplus area declared under the Punjab Act, held as follows :-

> "However, it does not appear that the surplus area declared under the Punjab Law should be reopened and recomputed under 1972 Haryana Act. No such express provision was engrafted in 1972 Act. Though the family of the appellants have swelled and some of the minors have become majors, the appellants are not entitled to have the surplus area which had become final reopened for recomputation under the 1972 Haryana Act. Thus considered, we find that the High Court was fully

justified in dismissing the writ petitions. The appeals are, therefore, dismissed, but without costs."

In **Amar Singh and others V. Ajmer Singh and others,** 1994 Suppl.(3) SCC 213, while considering the question of reopening of surplus area declared under the Punjab Act, after the enactment of the Haryana Act, the Hon'ble Supreme Court held as follows :-

"Learned counsel for Ajmer Singh-respondent has contended that although the surplus proceedings against Maru Ram were finalised in the year 1961/1962 but the possession of the surplus land remained with Ajmer Singh-respondent, till 1981 when the same was handed over to the appellant. Simply because the surplus land declared under the Punjab Act was not utilised and it remained in possession of Ajmer Singh-respondent would not make any difference so far as the position in law is concerned. The language of Section 12(3) is unequivocal and clear. According to it the surplus land declared under the Punjab Act stood vested in the State. The non-utilisation of surplus land till the date of vesting (23.12.1972) is of no consequence and makes no difference. The view we have taken is supported by the judgement of this Court in Bhagwanti Devi V. State of Haryana, 1994 PLJ 245 SC. We, therefore, allow the appeal, set aside the impugned judgement of learned Single Judge of the High Court dated 23.9.1987 and also the order of the Letters Patent Bench dated 3.11.1987.

Civil Writ Petition No.163 of 1986 filed by Ajmer Singh in the High Court stands dismissed. The appellant shall be entitled to his costs which we quantify as Rs.11,000/-. Costs to be paid by respondent-Ajmer Singh."

A Division Bench of this Court in **Dharam Pal and others V. State of Haryana and others**, 2002(1) PLJ 188 by relying upon the aforementioned judgement and after considering the provisions of Section 8 (1)(a) and 12(3) of the Haryana Act, held that proceedings which have attained finality under the Punjab Act, can not be reopened by taking benefit of the Haryana Act. Section 8(1)(a) of the Haryana Act, would not, therefore, entitle a land owner to pray for reopening of an order of surplus area, passed under the Punjab Act.

As the suit land was already surplus on the appointed day under the Haryana Act, it vested in the State of Haryana under Section 12(3) of the Haryana Act, which provides that lands declared surplus under the Punjab Law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day. Thus, even if it is presumed that the suit land had not vested in the joint State of Punjab, but as it was declared surplus under the Punjab Act, it vested in the State of Haryana, with the enactment of the Haryana Act, under the provisions of Section 12(3) of the Haryana Act. Even otherwise, it would be necessary to reiterate that neither Ram Rikh nor any of the landowners ever impugned the correctness of the order declaring the suit land surplus.

Thus, as the order declaring the suit land surplus under the Punjab Act had attained finality and the suit land vested in the State of

Haryana, it became available for allotment under the Utilisation Scheme. The Prescribed Authority, therefore, was well within its jurisdiction, in proceeding to allot the land. The order passed by the Prescribed Authority is, therefore, legal and valid and does not suffer from any error of jurisdiction.

In view of what has been held herein above, the jurisdiction of civil Courts to entertain the suit, impugning the legality of the order passed by the Prescribed Authority was barred by the provisions of Section 26 of the Haryana Act. Thus, the second and third questions of law are answered in the aforementioned terms.

It is, therefore, apparent that by decreeing, Civil Suit No.62-C of 1979 and dismissing Civil Appeal No.54 of 1985 on the premise that the order passed by the Prescribed Authority was without jurisdiction, the trial Court, as also the first appellate Court, committed an error of jurisdiction, as also of law. Consequently, R.S.A.2712 of 1987 is allowed and the impugned judgements and decrees are set aside. As a necessary consequence, RSA No.40 of 1984 is dismissed and judgement and decree passed in Civil Suit No.24-C of 15.6.1979 dismissing the suit by holding that jurisdiction of Civil Courts is barred and the judgment and decree dated 17.9.1983 passed in Civil Appeal No.421-C of 8.12.1981, dismissing the appeal filed by the landowners are upheld .

No order as to costs.

28.1.2008 (RAJIVE BHALLA)
GS JUDGE